

In The Nation

Perilous Misuse of 'Secret' Documents

By ARTHUR KROCK

WASHINGTON, Feb. 6—Reportorial enterprise and diligence are not sufficient explanations of how the seal of secrecy was broken on confidential documents in the files of the Executive Department that discredited a witness before the State subcommittee which is investigating the complex financial adventures of Robert G. Baker, former secretary to the Senate Democratic majority. Inside official assistance is required to obtain such documents for circulation in the press.

Generally, the decision to give this assistance is an unauthorized act of a Government underling in disregard both of the great personal risk involved and the sworn obligation of all guardians of these confidential archives. But sometimes the content of the documents so obviously serves the interest of higher authority that the victim is not alone in the suspicion that an individual act is not the entire explanation of the breach of the seal of secrecy.

In this latest instance the confidential material obtained for publication definitely served to discredit a subcommittee witness, Don R. Reynolds, whose testimony brought the name and certain properties of President Johnson into the Baker case. Moreover, the Washington columnist who came into possession of the material used it as the basis of a criticism of the subcommittee for making public the testimony of a witness whose credibility was impugned by the material. And this criticism had also been privately expressed at the White House, where the resentment of the staff for the release of this witness's testimony was made plain in many ways.

But it later developed that the members and counsel of the subcommittee had not seen or known of the secret dossiers on the career of the witness until they were spread in the public prints and his testimony had been released to the press on Jan. 20. Since the credibility of witnesses is among the responsibilities of the subcommittee to determine, and is a fundamental factor of the investigatory function of Congress, members of the subcommittee were deeply disturbed that basic

data for this determination had been made available *ex post facto* to the press instead of having been supplied to the investigators before, or even after, the witness had testified in executive session.

Thus far only one minority member of the subcommittee, Senator Curtis of Nebraska, has publicly taken note of this highly dubious procedure, and he did that by asserting that the testimony of the witness whose credibility was impugned had been "forthright, convincing" and impressively documented. But his colleagues of the minority have prepared a letter to Chairman Jordan that is a blanket complaint of many aspects of the inquiry to date. These include inaction on an issue of perjury created by conflicting sworn testimony of two witnesses and a top-level member of President Johnson's staff dealing with a gift of value made to Mr. Johnson when he was Senate majority leader, and a kickback on a premium on life insurance policies he bought in this same period.

Causes for Concern

The Democratic committeemen have said nothing on these matters in public. But if they are not troubled by the anonymous release for publication of personal dossiers, gathered by powerful Executive agencies from informants whose identity and assertions are concealed from the subject, and consigned to the Government archives under a seal of secrecy, they should be. And they should also be troubled by the criterion implied in this instance for the choice of the secret documents to be released to the press—the discrediting of persons who have acquired a public audience for statements impairing public confidence in the ethical standards of their Government.

Even when the damage is inflicted by purposeful or congenital liars, or irresponsible characters, or worse, processes of exposing these moral or mental defects are available to Government that do not violate the seal of secrecy on *ex parte* material gathered and deposited in confidence. In this particular case, the Senate subcommittee was the proper recipient of data essential to its assignment. The President has the authority to transmit such information, including income tax returns, to official investigatory bodies.

When the method employed is an anonymous handout of this nature to the press, the constitutional rights of persons are violated also. These include perhaps millions of citizens who should be concerned about this particular example, because the Government has on file allegations about them of which they are as ignorant as they are of their sources.

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